



# Pennsylvania Immigration and Citizenship Coalition

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## Reality Check: HB 1170's reliance on E-Verify, a Flawed System that Will Hurt Citizens, Immigrants, and Small Businesses

The Senate will soon be considering HB 1170, the Construction Industry Employee Verification Act, which would mandate use of the deeply flawed E-Verify program in the construction industry. **Proponents of the bill are making a lot of false claims to ram this bill through as quickly as possible and with as little scrutiny as possible.**

**Don't be fooled! The bill puts the jobs of over 2,000 citizens and work-authorized (legal) immigrant construction workers in peril!**

### Proponents claim that:

*HB 1170 means that all employers in the industry will use the program and act as the "first line of defense" and will therefore reward companies that "play by rules."*

- In fact, experience from other states tell us that the bill will put construction employers—particularly small construction companies that help to grow Pennsylvania's economy—in peril. At worst, it takes time away from a construction business's core mission. At best, it is a major headache that does not eliminate undocumented workers in the industry. For example....
  - In Arizona, a state with an E-Verify mandate, small business owner Mike Castillo stated that "the program isn't user-friendly for small-business owners." He tried to hire a part-time worker, but a technical glitch that took days to fix made it difficult. "If you don't have the luxury of a human-resources staff, E-Verify takes time away from your core business," he said.<sup>1</sup>
  - For any user of the program the federal government requires that all employers must read a 145 page E-Verify user manual. Additionally, Employers must sign an MOU with the federal government regarding their use---and potential misuse---of the program.
  - One small business in Maryland has estimated that it would cost approximately \$27,000 for the company to use E-Verify for one year,<sup>2</sup> thereby handicapping the owner's ability to hire new workers. Bloomberg estimates that E-Verify cost small businesses enrolled in the program \$81 million in one fiscal year.<sup>3</sup>

### Proponents claim that:

*HB 1170 means "bad actors hurting workers and cheating the system will stand out immediately - they won't want to report themselves."*

- Experience from other states says differently. The conservative CATO institute states that of the "four states [that] have mandated E-Verify for all employers and employees in these states are widely ignoring the mandate."<sup>4</sup> Even with much more aggressive enforcement regimes than HB 1170, at best, about half of employers comply. Employers are not complying to avoid "reporting" themselves.

<sup>1</sup> Jahna Berry, "Most Arizona Employers Aren't Using E-Verify," The Arizona Republic, July 28, 2010, [www.azcentral.com/arizonarepublic/news/articles/2010/07/28/20100728arizona-employers-ignoring-e-verify.html](http://www.azcentral.com/arizonarepublic/news/articles/2010/07/28/20100728arizona-employers-ignoring-e-verify.html).

<sup>2</sup> Chamber of Commerce of the USA v. Chertoff, No. 08-CV-3444-AW (D.Md.).

<sup>3</sup> Jason Arvello, "'Free' E-Verify May Cost Small Businesses \$2.6 billion: Insight," *Bloomberg*, Jan. 28, 2011.

<sup>4</sup> CATO Institute, "Checking E-Verify: The Costs and Consequences of a National Worker Screening Mandate," at [https://object.cato.org/sites/cato.org/files/pubs/pdf/pa775\\_1.pdf](https://object.cato.org/sites/cato.org/files/pubs/pdf/pa775_1.pdf).



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## Proponents claim that:

*HB 1170: E-Verify will “level the playing field” because undocumented workers “aren't going to turn in their bosses” but presumably E-Verify helps workers.*

- E-Verify does not make workers stronger or more willing to report bad employers for labor violations—it does just the opposite. An employer’s use of E-Verify makes workers more vulnerable to a bad employer. It also gives bad employers a new way to disrupt union organizing and retaliate against workers.
- According to immigration experts the National Immigration Law Center “E-Verify, as a potential mechanism for retaliation, compounds workers’ vulnerability and undermines labor and employment laws and standards. Like other immigration enforcement programs that are worksite-focused or targeted at workers or employers, E-Verify has already been used by unscrupulous employers to retaliate against workers who complain about mistreatment and to undercut workers’ efforts to improve their working conditions.”<sup>5</sup>

For example<sup>6</sup>:

- A Latino supermarket chain in northern California enrolled in E-Verify during a union organizing campaign. In the midst of the campaign by the United Food and Commercial Workers (UFCW) to organize the workers, the supermarket announced that it had enrolled in E-Verify to screen its workers’ employment eligibility. Although the chain initially claimed that the federal government had compelled it to participate in E-Verify, that claim proved to be false. After the chain announced its participation in E-Verify and, subsequently, that it was going to be subjected to an I-9 audit, many of its workers quit their jobs, severely undermining the UFCW’s organizing efforts.
- Six long-term workers at a luxury hotel were fired after the employer reverified their employment eligibility using E-Verify. The workers had been in discussions with local union representatives about working conditions and a potential union drive. In the midst of the workers’ union-related activity, the employer used E-Verify to unlawfully reverify their work eligibility and subsequently fired them. The terminations severely weakened the union organizing efforts.
- Several workers were engaged in an active organizing effort to better their workplace. After they submitted a petition to the National Labor Relations Board (NLRB) to seek a union election, the employer fired two of the worker organizers. The workers filed a charge at the NLRB to challenge the firings. After initially resisting reinstating the workers, the employer finally agreed to reinstate them. Approximately one month later, the employer sent five worker organizers letters claiming that E-Verify had revealed discrepancies with respect to their Social Security numbers. The letter stated that if the workers did not provide proper documentation of their work eligibility within 72 hours, they would be fired. The workers were then fired for purportedly not providing valid Social Security numbers. As a result, they couldn’t participate in the union election.

## Proponents claim that:

*HB 1170 (E-Verify) means that employers will stop “misclassifying employees and hiring undocumented workers” and that “all taxpayers as underpaid undocumented workers aren't contributing to the local tax base and companies aren't kicking in their fair share to unemployment and workers comp.”*

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<sup>5</sup> National Immigration Law Center, “Verification Nation: How E-Verify Effects America’s Workers,”

[https://www.nilc.org/wp-content/uploads/2016/02/Verification-Nation-2013-08\\_rev11-06-13.pdf](https://www.nilc.org/wp-content/uploads/2016/02/Verification-Nation-2013-08_rev11-06-13.pdf).

<sup>6</sup> All examples found in National Immigration Law Center, “Verification Nation: How E-Verify Effects America’s Workers,”

[https://www.nilc.org/wp-content/uploads/2016/02/Verification-Nation-2013-08\\_rev11-06-13.pdf](https://www.nilc.org/wp-content/uploads/2016/02/Verification-Nation-2013-08_rev11-06-13.pdf).



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- False. This argument is—at best—disingenuous. We all agree misclassification of workers is bad. But HB 1170 is a major incentive for misclassification. The bill applies ONLY to W-2 employees. If a worker is an independent contractor, he DOES NOT HAVE TO BE PUT THROUGH THE SYSTEM. Therefore, construction companies will not fire undocumented workers they currently have on staff, they will simply misclassify them as independent contractors.
- Because the federal government is the final authority on immigration law, and immigration law and regulation does not allow E-Verify to be used on independent contractors, HB 1170 cannot be extended to independent contractors and will support illegal misclassification.

**In actuality, HB 1170 is bad for workers—including citizens and work-authorized employees. The construction industry will be forced to fire U.S. citizens and work-authorized immigrants due to government errors.**

- E-Verify is a highly accurate program. However, due to errors in the government databases that support E-Verify, sometimes the system issues a Tentative Nonconfirmation (TNC) and eventually a Final Nonconfirmation (FNC) for a U.S. citizen or work-authorized (legal) immigrant. When this happens, **an employer must fire the worker immediately or face possible penalties from ICE.** If HB 1170 passes, these errors mean that construction companies will end up hiring workers, putting them through the E-Verify system within 3 days, **and then be forced to fire them the following week.** For smaller companies who need to quickly hire workers to fill jobs, this could be a nightmare.<sup>7</sup>
- If HB 1170 passes, about citizens and work-authorized (legal) immigrant workers employed in Pennsylvania construction would have to contact a government agency or risk losing their jobs.<sup>8</sup>
- If HB 1170 passes, over **2,000** citizens and work-authorized (legal) immigrant workers **construction workers** will have to contact a government agency or risk losing their jobs<sup>9</sup> and over **1,300** citizens and work-authorized (legal) **construction workers** would likely lose their jobs.<sup>10</sup>

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<sup>7</sup> *Findings of the Web-Based E-Verify Program Evaluation* (Westat, Dec. 2009), [www.uscis.gov/USCIS/E-Verify/E-Verify/Final%20E-Verify%20Report%2012-16-09\\_2.pdf](http://www.uscis.gov/USCIS/E-Verify/E-Verify/Final%20E-Verify%20Report%2012-16-09_2.pdf), 117. About 0.8 percent of workers receive an *erroneous* tentative nonconfirmation, or “TNC.” Approximately 0.5 percent of work-authorized individuals receive a final nonconfirmation in error (0.8 percent receive an erroneous TNC, and 0.3 percent are able to correct their TNC. This results in 0.5 percent of individuals receiving an erroneous TNC that could not be corrected and therefore became an FNC.). This document relies on error rates contained in independent evaluations of the E-Verify program conducted by Westat. These findings were published in 2009 and 2012. Although the Department of Homeland Security, United States Citizenship and Immigration Services, have released updated error rate estimates, these estimates have not been confirmed by an independent body, nor do these estimates break-out the data as explicitly as the Westat reports. As such, this document relies on the verified error rates used above.

<sup>8</sup> *See supra.*

<sup>9</sup> *See supra.* Approximately 0.5 percent of work-authorized individuals receive a final nonconfirmation (FNC) in error (0.8 percent receive an erroneous TNC, and 0.3 percent are able to correct their TNC. This results in 0.3 percent of individuals receiving an erroneous TNC that requires the worker contact a government agency to deal with the underlying error). There are currently about 261,000 workers employed in construction in Pennsylvania (<https://www.bls.gov/eag/eag.pa.htm>, U.S. Bureau of Labor Statistics, Construction, April 2019). The 2,088 figure was arrived at by multiplying these two numbers. *Findings of the Web-Based E-Verify Program Evaluation* (Westat, Dec. 2009), [www.uscis.gov/USCIS/E-Verify/E-Verify/Final%20E-Verify%20Report%2012-16-09\\_2.pdf](http://www.uscis.gov/USCIS/E-Verify/E-Verify/Final%20E-Verify%20Report%2012-16-09_2.pdf), 117.

<sup>10</sup> *See supra.* Approximately 0.5 percent of work-authorized individuals receive a final nonconfirmation (FNC) in error (0.8 percent receive an erroneous TNC, and 0.3 percent are able to correct their TNC. This results in 0.5 percent of workers who receive an FNC in error). There are currently about 261,000 workers employed in construction in Pennsylvania (<https://www.bls.gov/eag/eag.pa.htm>, U.S. Bureau of Labor Statistics, Construction, April 2019). The 1,305 figure was arrived at by multiplying these two numbers. *Findings of the Web-Based E-Verify Program Evaluation* (Westat, Dec. 2009), [www.uscis.gov/USCIS/E-Verify/E-Verify/Final%20E-Verify%20Report%2012-16-09\\_2.pdf](http://www.uscis.gov/USCIS/E-Verify/E-Verify/Final%20E-Verify%20Report%2012-16-09_2.pdf), 117.



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- Moreover, work-authorized immigrants (including refugees and asylees) are **twenty-seven times** more likely to receive a TNC than a U.S. citizen is.<sup>11</sup> For construction employers hiring refugees and asylees, the impact of E-Verify's errors will be amplified.

## Learn From Other State Lawmakers

As state legislatures have considered bills that require employers to use E-Verify, like HB 1170, Republicans and Democrats alike have raised concerns about the impact of the program on businesses and the economy.

- “The E-Verify system is far from perfect. It has tremendous costs to employers.” —*Republican Florida State Senator J.D. Alexander during floor debate on a state bill to make E-Verify mandatory*<sup>12</sup>
- “E-Verify is a program that is substantially flawed. . . . There is a fairly high level of both false positives and false negatives.” —*Republican Florida State Senate Judiciary Chairwoman Anitere Flores, during a hearing on a state bill to require businesses to use E-Verify. Although she was the original sponsor of the bill, she later relinquished the bill over concerns with its provisions.*<sup>13</sup>
- “It is really difficult for an employer, and it is really difficult to get the [hiring] process checked.” —*Republican Texas State Rep. Patricia Harless, a former E-Verify user, commenting on a bill that would make E-Verify mandatory, stating that she has seen American workers erroneously flagged by E-Verify and that correcting errors can take days.*<sup>14</sup>
- “You will be creating a mess and a more complicated system for small businesses. This will not solve the problem of illegal immigration.” —*Democratic Utah State Senator Luz Robles, critiquing a state bill which required businesses to use E-Verify*<sup>15</sup>
- “This is a very difficult issue. E-Verify is a tool but it's not a fool-proof tool.” —*Republican Texas State Rep. Byron Cook, Chairman of the Texas House State Affairs Committee*<sup>16</sup>
- “The states should not be in a position of having to enforce laws which are the responsibility of the federal government.” —*Republican Indiana State Senator Ron Alting*<sup>17</sup>
- “If you're going to mandate and punish, you need some way to fill those positions legally.” —*Republican Utah Attorney General Mark Shurtleff*<sup>18</sup>

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<sup>11</sup> *Evaluation of the Accuracy of E-Verify Findings* (Westat, July 2012), [www.uscis.gov/USCIS/Verification/E-Verify/E-Verify\\_Native\\_Documents/Everify%20Studies/Evaluation%20of%20the%20Accuracy%20of%20E-Verify%20Findings.pdf](http://www.uscis.gov/USCIS/Verification/E-Verify/E-Verify_Native_Documents/Everify%20Studies/Evaluation%20of%20the%20Accuracy%20of%20E-Verify%20Findings.pdf). p.24

<sup>12</sup> Patricia Mazzei, “Running Coverage of Senate Immigration Debate,” *The Miami Herald Blog*, May 3, 2011, <http://miamiherald.typepad.com/nakedpolitics/2011/05/running-coverage-of-senate-immigration-debate.html>.

<sup>13</sup> Jim Ash, “Businesses Slam Plan for Immigration Bill,” *Pensacola News Journal*, Mar. 15, 2011.

<sup>14</sup> Julian Aguilar, “E-Verify Battle Could Soon Greet Texas Lawmakers,” *The Texas Tribune*, Feb. 3, 2011, [www.texastribune.org/texas-legislature/82nd-legislative-session/e-verify-battle-could-soon-greet-texas-lawmakers](http://www.texastribune.org/texas-legislature/82nd-legislative-session/e-verify-battle-could-soon-greet-texas-lawmakers).

<sup>15</sup> Cathy McKittrick, “E-Verify Bill Clears Senate: Opponents say Proposal Won't Solve Illegal Immigration,” *The Salt Lake Tribune*, Mar. 6, 2010.

<sup>16</sup> Julian Aguilar, “Will E-Verify Bills Still Pass Texas Legislature?” *The Texas Tribune*, May 5, 2011, [www.texastribune.org/texas-legislature/82nd-legislative-session/will-e-verify-bills-still-pass-texas-legislature/](http://www.texastribune.org/texas-legislature/82nd-legislative-session/will-e-verify-bills-still-pass-texas-legislature/).

<sup>17</sup> “Immigration Bill Q&A: What State Lawmakers Say,” *Journal and Courier*, Jan. 19, 2011.

<sup>18</sup> Jeanna Smialek, “State Officials Say Lamar Smith's E-Verify Bill Is Unworkable and Would Cost Americans Jobs,” *The Houston Chronicle*, July 20, 2011, <http://blog.chron.com/txpotomac/2011/07/state-officials-say-lamar-smiths-e-verify-is-unworkable-and-would-cost-americans-jobs/>.